

Manchester Plastics, Division of Larizza Industries, Inc. and International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO. Cases 7-CA-36395 and 7-CA-36492

January 31, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING
AND COHEN

On October 6, 1995, Administrative Law Judge Irwin H. Socoloff issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified.¹

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Manchester Plastics, Division of Larizza Industries, Inc., Manchester, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Insert the following as paragraph 1(k).

“(k) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.”

2. Substitute the attached notice for that of the administrative law judge.

¹ The Respondent has excepted to the judge's failure to include a nonadmissions clause in the recommended Order and notice. We find no merit in the Respondent's exceptions. First, although the Respondent's motion that the judge issue findings of fact, conclusions of law, and an appropriate Order and notice based on the complaint allegations was premised “on the basis that it does not constitute technically an admission,” the Respondent failed to request specifically that nonadmissions language be included in the Order and notice, and did not condition its motion on such inclusion. Second, the Board has found the inclusion of nonadmissions language in Board notices to be inappropriate. *Pottsville Bleaching Dyeing Co.*, 301 NLRB 1095, 1095-1096 (1991) (“[W]e will not permit the inclusion of a nonadmissions clause in a Board notice under any circumstances.”). Accordingly, we deny the Respondent's exceptions.

We shall modify the judge's recommended Order and shall substitute a new notice to include the standard narrow cease-and-desist language inadvertently omitted by the judge.

APPENDIX

**NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT issue disciplinary notices to employees in retaliation for their union activities.

WE WILL NOT coercively interrogate employees regarding their union activities and sympathies.

WE WILL NOT threaten employees that their union activities will cause job loss, and that we will close the Manchester plant if the employees select International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO to represent them or if they go on strike.

WE WILL NOT threaten to close the Homer plant if the employees working there support the UAW drive at Manchester.

WE WILL NOT create the impression among our employees that their union activities are under surveillance.

WE WILL NOT supply employees with anti-UAW flyers to distribute.

WE WILL NOT instruct employees not to participate in the UAW's campaign, and encourage them to remove literature which they have posted in support of the Union.

WE WILL NOT condone threats of physical violence against employees because of their union activities.

WE WILL NOT inform employees that it would be futile for them to select the UAW as their representative because we will not bargain with that Union or promise employees that we will reopen negotiations with the Manchester Plastics Independent Union if they abandon their support for the UAW.

WE WILL NOT orally or in writing promulgate and disparately enforce overly broad no-solicitation rules or no-access rules.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the unlawful no-solicitation and no-access rules promulgated in September and October 1994.

WE WILL rescind and expunge from our files any reference to the disciplinary notices issued to Peggy Cook and Elizabeth Clouse in September and October 1994, respectively, and notify the affected employees, in writing, that this has been done.

MANCHESTER PLASTICS, DIVISION OF
LARIZZA INDUSTRIES, INC.

Mark D. Rubin, Esq., for the General Counsel.

A. David Mikesell, Esq., of Detroit, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

IRWIN H. SOCOLOFF, Administrative Law Judge. Upon charges filed on September 22 and October 19, 1994, as thereafter amended, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO (the Union) against Manchester Plastics, Division of Larizza Industries, Inc. (the Respondent), the General Counsel of the National Labor Relations Board, by the Regional Director for Region 7, issued a consolidated complaint dated December 19, 1994, alleging violations by Respondent of Section 8(a)(3) and (1) and Section 2(6) and (7) of the National Labor Relations Act (the Act). Respondent, by its answer, denied the commission of any unfair labor practices.

Pursuant to notice, trial was held before me in Manchester, Michigan, on June 28, 1995, at which the General Counsel and the Respondent were represented by counsel and all parties appeared and were afforded full opportunity to be heard. At the outset of the trial, and for reasons more fully set forth below, Respondent moved that I recess the hearing and issue findings of fact, conclusions of law, and an appropriate order, in accordance with the complaint allegations, provided that the effective date for any required notice posting be deferred. Both the General Counsel and the Charging Party reserved the right to file a brief in opposition to delayed posting, but neither did so, effectively waiving objection to the granting of Respondent's motion.

On the entire record in these cases, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a corporation with offices and places of business located in Manchester and Homer, Michigan, is engaged in the manufacture and nonretail sale of automotive parts. During the year ending December 31, 1993, a representative period, Respondent, in the course and conduct of its business operations, purchased and received at its Michigan facilities goods valued in excess of \$50,000, which were sent directly

from points located outside the State of Michigan. I find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

The undisputed testimony of Barbara McConnell, Respondent's director of labor relations, establishes that, on the day of trial, the Company was within 9 days of a virtual shutdown of the Manchester plant production facilities in order to retool for a new program. Thus, the Company intended, on Friday, July 7, 1995, to lay off 120 of its 170 Manchester employees, for a period of 1 year, with recall expected on or about July 1, 1996. It is the Manchester facility that is the subject of this case.

In these circumstances, and in view of its expressed desire not to contest the complaint allegations, the logic of Respondent's unopposed position is compelling, and a delayed remedial posting is entirely appropriate. Accordingly, I find, in harmony with the motion, that Respondent engaged in the unfair labor practice conduct alleged in the complaint, in violation of Section 8(a)(3) and (1) of the Act, and I conclude that notice posting should be delayed so as to commence when the Manchester plant is, again, in full or substantially full operation on or about July 1, 1996.

IV. THE EFFECTS OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practice conduct in violation of Section 8(a)(3) and (1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. Manchester Plastics, Division of Larizza Industries, Inc. is an employer engaged in commerce, and in operations affecting commerce, within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By issuing disciplinary notices to employees Peggy Cook and Elizabeth Clouse in retaliation for their union activities, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(3) of the Act.

4. By coercively interrogating employees regarding their union activities and sympathies, Respondent has engaged in

unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

5. By threatening employees that their union activities would cause a loss of jobs, and that Respondent would close the Manchester plant if the employees selected the UAW to represent them or if they went on strike, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

6. By threatening to close the Homer plant if the employees working there supported the UAW drive at Manchester, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

7. By creating the impression among its employees that their union activities were under surveillance, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

8. By supplying employees with anti-UAW flyers to distribute, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

9. By instructing employees not to participate in the UAW's campaign, and by encouraging employees to remove literature which they had posted in support of the Union, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

10. By condoning threats of physical violence against employees because of their union activities, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

11. By informing employees that it would be futile for them to select the UAW as their representative because Respondent would not bargain with it, and by promising employees that it would reopen negotiations with the incumbent collective-bargaining representative, the Manchester Plastics Independent Union, if the employees would abandon their support for the UAW, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

12. By orally and in writing promulgating and disparately enforcing overly broad no-solicitation rules, and by orally promulgating and disparately enforcing a policy of no-access to the Manchester facility by employees during their non-work hours, Respondent has engaged in unfair labor practice conduct within the meaning of Section 8(a)(1) of the Act.

13. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹

ORDER

The Respondent, Manchester Plastics, Division of Larizza Industries, Inc., Manchester, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

¹ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Issuing disciplinary notices to employees in retaliation for their union activities.

(b) Coercively interrogating employees regarding their union activities and sympathies.

(c) Threatening employees that their union activities will cause a loss of jobs, and that Respondent will close the Manchester plant if the employees select the UAW to represent them or if they go on strike.

(d) Threatening to close the Homer plant if the employees working there support the UAW drive at Manchester.

(e) Creating the impression among its employees that their union activities are under surveillance.

(f) Supplying employees with anti-UAW flyers to distribute.

(g) Instructing employees not to participate in the UAW's campaign, and encouraging them to remove literature which they posted in support of the Union.

(h) Condoning threats of physical violence against employees because of their union activities.

(i) Informing employees that it would be futile for them to select the UAW as their representative because Respondent will not bargain with it, and promising employees that it will reopen negotiations with the Manchester Plastics Independent Union if the employees abandon their support for the UAW.

(j) Orally and, in writing, promulgating and disparately enforcing overly broad no-solicitation rules, and orally promulgating and disparately enforcing a policy of no-access to the Manchester facility by employees during their nonwork hours.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful no-solicitation and no-access rules promulgated in September and October 1994.

(b) Rescind and expunge from its files any reference to the disciplinary notices issued to Peggy Cook and Elizabeth Clouse in September and October 1994, respectively, and notify the affected employees, in writing, that this has been done.

(c) Post at its Manchester, Michigan facility, beginning on the date the plant resumes full or substantially full operations, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 7, after being duly signed by the Respondent's representative, shall be posted by it and thereafter maintained for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."